

Union Calendar No. 407

103D CONGRESS
2D SESSION

H. R. 1520

[Report No. 103-737]

A BILL

To amend the Petroleum Marketing Practices Act.

SEPTEMBER 22, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 1993

Mr. WYDEN (for himself, Mr. DINGELL, Mr. SHARP, Mr. SWIFT, Mr. STUDDS, Mr. LEHMAN, Mr. PALLONE, Mr. KREIDER, Mr. MANTON, Mr. KASICH, Mr. ROWLAND, Mr. MARKEY, Mr. ACKERMAN, Mrs. COLLINS of Illinois, Mr. FIELDS of Texas, Mr. GILLMOR, and Mr. OXLEY) introduced the following bill; which was referred to the Committee on Energy and Commerce

SEPTEMBER 22, 1994

Additional sponsors: Mr. SYNAR, Mr. BOUCHER, Ms. MARGOLIES-MEZVINSKY, Mr. COYNE, Mr. OBERSTAR, Mrs. MORELLA, Mr. COOPER, Mr. PETERSON of Minnesota, Mr. TAUZIN, Mr. SANTORUM, Mr. GILCHREST, Mr. WYNN, Mrs. BENTLEY, Mr. CARDIN, Mr. HOYER, Mr. MFUME, and Ms. NORTON

SEPTEMBER 22, 1994

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend the Petroleum Marketing Practices Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Petroleum Marketing
5 Practices Act Amendments of 1993”.

6 **SEC. 2. CONVERSION TO COMPANY OPERATION.**

7 Section 102(b)(3)(A)(ii) of the Petroleum Marketing
8 Practices Act (15 U.S.C. 2802(b)(3)(A)(ii)) is amended
9 by inserting after “purpose of” the following: “converting
10 the leased marketing premises to operation by employees
11 or agents of the franchisor for the franchisor’s own ac-
12 count or otherwise”.

13 **SEC. 3. PREEMPTION.**

14 Section 106 of the Petroleum Marketing Practices
15 Act (15 U.S.C. 2806) is amended—

16 (1) by adding at the end of subsection (a) the
17 following: “Nothing in this title shall be deemed to
18 limit the ability of a State or any political subdivi-
19 sion thereof to regulate any specific provision of a
20 franchise. No State or any political subdivision
21 thereof may adopt, enforce or continue in effect any
22 provision of any law or regulation requiring any pay-
23 ment for a franchisee’s goodwill upon the occurrence
24 of a termination of a franchise or nonrenewal of a
25 franchise relationship authorized by this title.”; and

1 (1) by amending subsection (a) to read as
2 *follows:*

3 “(a) To the extent that any provision of this title ap-
4 *plies to the termination (or the furnishing of notification*
5 *with respect thereto) of any franchise, or to the nonrenewal*
6 *(or the furnishing of notification with respect thereto) of*
7 *any franchise relationship, no State or any political sub-*
8 *division thereof may adopt, enforce, or continue in effect*
9 *any provision of any law or regulation (including any rem-*
10 *edy or penalty applicable to any violation thereof) with re-*
11 *spect to termination (or the furnishing of notification with*
12 *respect thereto) of any such franchise or to the nonrenewal*
13 *(or the furnishing of notification with respect thereto) of*
14 *any such franchise relationship unless such provision of*
15 *such law or regulation is the same as the applicable provi-*
16 *sion of this title. Nothing in this title shall be deemed to*
17 *limit the ability of a State or any political subdivision*
18 *thereof to regulate any specific provision of a franchise. No*
19 *State or any political subdivision thereof may adopt, en-*
20 *force, or continue in effect any provision of any law or regu-*
21 *lation requiring any payment for a franchisee’s goodwill*
22 *upon the occurrence of a termination of a franchise or*
23 *nonrenewal of a franchise relationship authorized by this*
24 *title.”; and*

1 (2) by adding at the end of subsection (b) the
2 following: “Nothing in this title shall be deemed to
3 prohibit any State from specifying the terms and
4 conditions under which any franchise or franchise
5 relationship may be transferred to a franchisee’s
6 designated successor upon the franchisee’s death.”.

7 **SEC. 4. UNDERLYING LEASES.**

8 Section 102(c)(4) of the Petroleum Marketing Prac-
9 tices Act (15 U.S.C. 2802(c)(4)) is amended—

10 (1) by redesignating subparagraphs (A) and
11 (B) as clauses (i) and (ii), respectively and setting
12 such clauses on an 6-em indentation;

13 (2) by inserting “—” after “lease, if”;

14 (3) by designating the text which follows “lease,
15 if—” as subparagraph (A) and setting such type on
16 a 4-em indentation; and

17 (4) by adding at the end the following new sub-
18 paragraphs:

19 “(B) during the 90-day period after notifi-
20 cation was given pursuant to section 104 the
21 franchisor offers to assign to the franchisee any
22 options to extend the underlying lease or op-
23 tions to purchase the marketing premises which
24 may be held by the franchisor: *Provided*, That

1 the franchisor may condition any such assign-
2 ment upon receipt by the franchisor of—

3 “(i) an unconditional release executed
4 by both the landowner and the franchisee
5 releasing the franchisor from any and all
6 liability accruing after the date of the as-
7 signment for—

8 “(I) financial obligations under
9 any such option (or the resulting ex-
10 tended lease or purchase agreement);

11 “(II) environmental contamina-
12 tion to (or originating from) the mar-
13 keting premises; or

14 “(III) the operation or condition
15 of the marketing premises; and

16 “(ii) an instrument executed by both
17 the landowner and the franchisee assuring
18 the franchisor and its contractors reason-
19 able access to the marketing premises for
20 the purpose of testing for and remediating
21 any environmental contamination that may
22 be present at such premises; and

23 “(C) in a situation in which the franchisee
24 acquires possession of such leased marketing
25 premises effective immediately after loss of the

1 franchisor's right to grant possession (either
2 through an assignment pursuant to subpara-
3 graph (B) above or by obtaining a new lease or
4 purchasing the marketing premises from the
5 landowner), the franchisor (if requested in writ-
6 ing by the franchisee within 30 days after noti-
7 fication was given pursuant to section 104),
8 during the 90-day period after notification was
9 given pursuant to section 104, either—

10 “(i) made a bona fide offer to sell,
11 transfer, or assign to the franchisee such
12 franchisor's interest in any improvements
13 or equipment located on such premises; or

14 “(ii) if applicable, offered the
15 franchisee a right of first refusal of at
16 least 45 days duration of an offer, made by
17 another, to purchase such franchisor's in-
18 terest in such improvements and equip-
19 ment.”.

20 **SEC. 5. WAIVER OF RIGHTS.**

21 Section 105 of the Petroleum Marketing Practices
22 Act (15 U.S.A. 2805) is amended by adding at the end
23 the following new subsection:

1 “(f)(1) No franchisor shall require, as a condition of
2 entering into or renewing the franchise relationship, a
3 franchisee to release or waive—

4 “(A) any rights under this title or other Fed-
5 eral law; or

6 “(B) any rights the franchisee may have under
7 any valid and applicable State law.

8 “(2) No provision of any franchise shall be valid or
9 enforceable which specifies that the interpretation or en-
10 forcement of the franchise shall be governed by the law
11 of any State other than the State in which the franchisee
12 has its principal place of business.”.